

Message Text

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APPROVED BY ACDA/IR:ACFLOYD

PM:LNOSENZO

OES:HBENGELSDORF

NSC:DELLIOTT

C:KELLY

S/P:JKALICKI

ERDA:AFRIEDMAN

S/S- JPMOFFAT

ACDA/NWT:TDAVIES

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FM SECSTATE WASHDC

TO AMEMBASSY BONN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY OTTAWA

AMEMBASSY PARIS

AMEMBASSY TOKYO

USMISSION IAEA VIENNA

INFO AMEMBASSY BRASILIA

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EXDIS

E.O. 11652: GDS

TAGS: PARM

SUBJECT: U.S.-FRG DISCUSSIONS RE NUCLEAR SUPPLIERS MEETING

REF: STATE 166532

1. BEGIN SUMMARY. MUTUALLY BENEFICIAL BILATERAL U.S.-FRG
CONSULTATIONS WERE HELD IN WASHINGTON JULY 14-15 IN PREPARA-
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TION FOR SEPTEMBER MEETING OF KEY NUCLEAR SUPPLIERS. CON-
SULTATIONS DEVOTED TO CONSTRUCTIVE, DETAILED DISCUSSION OF
PRELIMINARY DRAFT GUIDELINES PREPARED AT LONDON MEETING
(COPY BEING POUCED TO ALL ADDRESSEES) INCLUDING CLARIFICA-

TION OF THEIR OBJECTIVES AND PRACTICAL IMPLICATIONS. END
SUMMARY.

2. WELL-BALANCED, EXPERT GERMAN TEAM, HEADED BY AMBASSADOR BALKEN, INCLUDED MESSRS. LOOSCH (UNDER-SECRETARY, MINISTRY OF RESEARCH AND TECHNOLOGY), ROUGET (ASSISTANT SEC. EXT AFF) HAUBER (DISARMAMENT OFFICE, EXT AFF), KUKAI (MINISTRY OF INTERIOR), GUTERMUTH (MINISTRY OF ECONOMY) AND SCHAUER (FRG EMBASSY). U.S. TEAM HEADED BY GEORGE VEST, INCLUDED MESSRS. KRATZER, ELLIOTT, FRIEDMAN, VAN DOREN, NOSENZO, BENGELSDORF, KELLY, AND KALICKI.

3. RE PARA 1 OF PRELIMINARY DRAFT GUIDELINES, GERMANS

NOTED APPLICATION ONLY TO EXPORTS TO NON-NUCLEAR-WEAPON STATES. IT WAS AGREED THAT EXPORTS TO NUCLEAR WEAPON STATES SHOULD ALSO BE COVERED WITH RESPECT TO: (1) THE REQUIREMENT FOR PHYSICAL PROTECTION OF SENSITIVE MATERIALS, AND (2) OBTAINING ASSURANCES AGAINST RETRANSFER TO A NON-NUCLEAR-WEAPON STATE WITHOUT THE REQUISITE SAFEGUARDS AND CONDITIONS. THE GERMANS ALSO NOTED THEIR UNDERSTANDING THAT THE "TRIGGER LIST" WOULD BE SUBSTANTIALLY THE SAME AS THE ZANGGER COMMITTEE LIST, WITH ONLY ONE OR TWO ADDED ITEMS (SUCH AS HEAVY WATER PLANTS), TOGETHER WITH WHATEVER WAS AGREED TO ON TRANSFERRED TECHNOLOGY.

4. WITH RESPECT TO PARA 2, THE GERMANS ASKED WHAT SORT OF "FORMAL GOVERNMENTAL ASSURANCES" WOULD BE REQUIRED FROM NPT PARTIES. THEY POINTED OUT THAT SOME NPT PARTIES MIGHT OBJECT TO BEING ASKED TO DUPLICATE THEIR NPT UNDERTAKINGS, AND THAT THIS MIGHT BE PARTICULARLY TROUBLESOME WHERE THE "FORMAL ASSURANCE" HAD TO BE APPROVED BY A PARLIAMENT. US REP. EXPLAINED THE IMPORTANCE OF HAVING BACK-UP OF BILATERAL UNDERTAKING THAT WAS NOT TIED TO DURATION OF NPT, EVEN THOUGH WE THOUGHT WITHDRAWALS FROM NPT WERE UNLIKELY. GERMANS SAID IT WAS THEIR UNDERSTANDING THAT UNDER PARA 4 EVEN

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EXPORTS TO NPT PARTIES WOULD HAVE TO BE OF DURATION CONSISTENT WITH GOV/1621 GUIDELINES, AND WONDERED WHETHER A COMBINATION OF THIS FEATURE WITH REFERENCE TO NPT ADHERENCE COULD NOT BE USED AS A SUBSTITUTE FOR A FORMAL REPETITION OF THE NPT UNDERTAKINGS, WHERE RESISTANCE TO REPETITION WAS ENCOUNTERED. US REPS NOTED THAT WE HAD NOT ENCOUNTERED SUCH RESISTANCE IN PRACTICE, DID NOT BELIEVE IT SHOULD BE A PROBLEM, AND STRESSED THE IMPORTANCE WE ATTACH TO A BILATERAL BACK-UP.

5. WITH RESPECT TO PARA 3 (PHYSICAL SECURITY MEASURES), GERMANS PREFERRED THE SECOND (LONGER) ALTERNATIVE. THEY STRESSED THE IMPORTANCE OF AGREEMENT ON STANDARDS, RATHER

THAN SPECIFIC MEASURES (WHICH WERE THE RESPONSIBILITY OF THE INDIVIDUAL STATE), AND SOUGHT ASSURANCES THAT THERE WOULD NOT BE CONTINUOUS, DETAILED MONITORING BY THE SUPPLIER OF ACTUAL APPLICATION OF MEASURES. US DEL INDICATED THAT THIS WAS NOT CONTEMPLATED, ALTHOUGH PERIODIC CONSULTATIONS TO PROVIDE ASSURANCE THAT THE AGREED STANDARDS WERE IN FACT BEING MET IN PRACTICE WOULD BE EXPECTED.

6. WITH RESPECT TO THE "FIRST APPROACH", SUGGESTED BY THE U.K., THAT CALLED FOR SAFEGUARDS ON THE ENTIRE FUEL CYCLE AS A CONDITION OF SUPPLY, THE GERMANS WONDERED WHETHER THIS COULD NOT BE INCORPORATED IN THE PAPER AS THE GOAL, WHICH

WAS TO BE APPROACHED IN ALL ACHIEVABLE WAYS, RATHER THAN AS A CURRENT CONDITION OF SUPPLY. IN THIS WAY, THE PAPER COULD REFLECT BOTH THE FIRST AND SECOND APPROACHES. THERE WAS SOME DISCUSSION AS TO WHETHER EVEN THIS VERSION OF THE FIRST APPROACH WOULD BE ACCEPTABLE TO THE FRENCH. IT WAS DECIDED THAT THE GERMANS WOULD FIRST CONSULT THE U.K. TO SEE IF THEY THOUGHT IT ADVISABLE TO HAVE THIS IDEA BROACHED WITH THE FRENCH BEFORE THE SEPTEMBER MEETING, OR WHETHER THE BRITISH MIGHT WISH TO STICK BY THE FIRST APPROACH AT LEAST FOR TACTICAL PURPOSES. THE GERMANS SAID THEY WOULD ADVISE US OF THE OUTCOME OF THEIR CONSULTATIONS WITH THE U.K. ON THIS POINT. U.S. DEL OBSERVED THAT BROAD CONSTRUCTION OF SECOND APPROACH, PARTICULARLY THROUGH "CONTAMINATION" (PERMANENT SAFEGUARDS ON FACILITIES TOUCHED BY SUPPLIED MATERIALS OR

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TECHNOLOGY) COULD SERVE AS BRIDGE TO FIRST APPROACH.

7. WITH RESPECT TO PARA 5 OF THE FIRST APPROACH, THERE WAS DISCUSSION AS TO WHAT WAS MEANT BY A "UNIFORM" IAEA SYSTEM, AND WHETHER THIS WAS INTENDED TO MEAN A UNIVERSALLY ACCEPTED ONE; ONE HAVING SUBSTANTIALLY THE SAME FEATURES AS INFIRC 153 (WHICH WAS CONSIDERED THE PREFERRED POSITION); OR SOME COMBINATION OF INFIRC 153 AND 66.

8. WITH RESPECT TO PARA 4 OF THE SECOND APPROACH, IT WAS NOTED THAT THE FRENCH HAD IN MIND ONLY RARE, DE MINIMIS EXCEPTIONS, AND THAT THE NATURE OF THESE SHOULD BE INDICATED BY ILLUSTRATIVE EXAMPLES, RATHER THAN BY A DEFINITIONAL APPROACH.

9. WITH RESPECT TO PARA 5 OF THE SECOND APPROACH, THE GERMANS QUESTIONED THE INCLUSION OF REACTOR TECHNOLOGY. THEY COULD SEE THE CASE FOR COVERING HEAVY WATER REACTORS, AND SEEMED TO APPRECIATE OUR EXPLANATION OF THE CANADIAN OBJECTION TO CONFINING IT TO THIS TYPE. EVEN THOUGH THEY HAD INCLUDED REACTOR TECHNOLOGY IN THEIR AGREEMENT WITH BRAZIL, THEY SAID THERE WERE MANY POTENTIAL DIFFICULTIES IN IMPLEMENTING SUCH AN AGREEMENT THAT WOULD REQUIRE FURTHER STUDY

AND CAREFUL HANDLING. U.S. NOTED IMPORTANCE OF GIVING DUE
CONSIDERATION TO INCLUDING REACTOR TECHNOLOGY.

10. WITH RESPECT TO PARA 5(B) THE U.S. REPS EXPLAINED THAT
THE PURPOSE WAS TO PUT THE BURDEN OF PROOF ON THE RECIPIENT
THAT A REPLICATED FACILITY DID NOT USE IMPORTED TECHNOLOGY.
THE GERMANS SAID WE SHOULD BE CAREFUL TO AVOID ANY APPEAR-
ANCE THAT THE SUPPLIER COULD BE ARBITRARY IN HIS APPLICA-
TION OF THIS RIGHT, AND STRESSED THE NEED FOR A PHRASE SUCH
AS "IN CONSULTATION WITH THE RECIPIENT." (IT WAS AGREED
THAT THIS WAS PREFERABLE TO "IN COOPERATION WITH THE RE-
CIPIENT.") THE GERMANS ALSO SUGGESTED THE DESIRABILITY OF
A SYSTEM IN WHICH THE SUPPLIER AND RECIPIENT WOULD NOTIFY
THE IAEA AT THE TIME OF THE TRANSACTION OF WHAT TECHNOLOGY
WAS BEING TRANSFERRED, IN ORDER TO AVOID DISPUTES AS TO
THIS FACT AT A LATER TIME.

11. WITH RESPECT TO PARA 6, THE GERMANS NOTED THAT THE
TITLE "MULTILATERAL ENTERPRISES" WAS A MISNOMER, SINCE
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THIS PARAGRAPH (AS DISTINGUISHED FROM PARA 10) DEALT
PRIMARILY WITH SUPPLIER INVOLVEMENT IN THE MANAGEMENT
AND OPERATION OF THE PLANT. U.S. REPS POINTED OUT THAT
THIS PARAGRAPH CALLED FOR SUPPLIER INVOLVEMENT "AT
LEAST". THE GERMANS SAID THAT WHILE THEY WERE NOT
OPPOSED TO THE OBJECTIVE OF REQUIRING SUCH INVOLVEMENT,
THEY FIRST WISHED TO MAKE SURE THAT THEIR LEGAL SYSTEM
WOULD ENABLE THEM TO ENFORCE SUCH A REQUIREMENT AS A
CONDITION OF SUPPLY. WHILE THEY HAD FAIRLY COMPLETE
AUTHORITY TO CONTROL EXPORT OF AN ENTIRE ENRICHMENT
OR REPROCESSING PLANT, OR THE TECHNOLOGY THEREFOR,
SINCE THE GERMAN GOVERNMENT WAS A CO-DEVELOPER AND
CO-OWNER OF SUCH TECHNOLOGY, IN THE CASE OF COMPONENTS
THEY WOULD HAVE TO RELY ON THEIR LICENSING AUTHORITY.
FOR INSTANCE, IF THE ONLY GERMAN CONTRIBUTION TO SUCH
A PLANT WAS A COMPONENT, COULD THEY USE THE LICENSING
AUTHORITY TO REQUIRE THE GERMAN COMPANY TO TAKE
AFFIRMATIVE ACTIONS, (SOME WITH FINANCIAL IMPLICATIONS
SUCH AS INVESTMENT) THAT MIGHT BE REQUIRED TO OBTAIN
A VOICE IN THE MANAGEMENT OR OPERATION OF THE PLANT?
THE LEGAL BASIS FOR THEIR LICENSING REQUIREMENTS IS
THAT THE CONDITIONS IMPOSED ARE NECESSARY FOR NATIONAL
SECURITY PURPOSES. IF THE SUGGESTED CONDITIONS WERE
CHALLENGED IN COURT, COULD THEY SUSTAIN THE POSITION
THAT THE TRANSACTION WOULD BE INJURIOUS TO THE NATIONAL
SECURITY WITHOUT PARTICIPATION IN THE MANAGEMENT, BUT
NOT INJURIOUS WITH SUCH PARTICIPATION? IF THEY LOST
SUCH A LAWSUIT, WOULD THIS NOT WEAKEN THEIR REGULATORY
AUTHORITY? THEY SAID THEY WERE STUDYING SUCH QUESTIONS
WITH A VIEW TO SEEKING HOW FAR THEY COULD GO IN COMMITTING
THEMSELVES TO SUCH A REQUIREMENT, THE OBJECTIVE OF WHICH

THEY AGREED WITH.

12. OTHER POINTS THEY RAISED WITH RESPECT TO PARA 6
WERE (A) THE MEANING OF "UNDER THE JURISDICTION OF THE
SUPPLIER GOVERNMENT": WHAT DEGREE OF ACTUAL GOVERNMENT
CONTROL OF THE SUPPLIER COMPANY'S INVOLVEMENT WAS
ENVISAGED (AND IN THIS CONNECTION THEY POINTED OUT THE
SEVERE LIMITATIONS ON SUCH CONTROL UNDER GERMAN COMPANY
LAWS); AND (B) THE NEED FOR DEFINING HOW FAR DOWN THE
SPECTRUM IN COMPONENTS THIS RULE WOULD APPLY. IT WAS
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AGREED THAT "DIRECT PARTICIPATION" DID NOT MEAN A
CONTROLLING INTEREST.

13. THE GERMANS HAD NO PROBLEM WITH PARAGRAPH 7; THEY
NOTED THAT THEY HAD USED THE 20 PERCENT ENRICHMENT
FIGURE IN THEIR AGREEMENT WITH BRAZIL.

14. WITH RESPECT TO PARA 8 THEY ASKED OUR VIEWS ON
THE BRACKETED PHRASES IN SUBPARAGRAPHS(A) AND (B), NOTI4G
THAT THEY HAD BEEN SUGGESTED BY THE CANADIANS. BOTH
SIDES SEEMED TO AGREE THAT THE FIRST OF THESE PHRASES--
WHICH WOULD GIVE THE SUPPLIER A VETO OVER WHETHER THE
MATERIAL WAS REPROCESSED AT ALL--WAS PROBABLY TOO
DRASTIC. THE GERMANS QUESTIONED WHAT WAS ADDED BY
THE PHRASE "AND IN A MANNER" AND WHETHER IT DID NOT
IMPLY A DEGREE OF SUPPLIER CONTROL OVER THE OPERATION
OF A REPROCESSING PLANT THAT MIGHT PROVE UNACCEPTABLE.
U.S. REPS POINTED OUT SEVERAL CASES IN WHICH THE
INCLUSION OF THE PHRASE MIGHT BE HELPFUL--INCLUDING (A)
THE MANNER IN WHICH PLUTONIUM WAS PROTECTED IN STORAGE
AND (B) IF A TECHNIQUE WERE DEVELOPED FOR "SPIKING"
PLUTONIUM OR FOR ITS INCOMPLETE REPROCESSING, THIS
PHRASE WOULD GIVE THE SUPPLIER A HANDLE TO REQUIRE THAT
THIS TECHNIQUE BE USED TO REDUCE VULNERABILITY TO THEFT
OR SEIZURE.

15. WITH RESPECT TO PARA 8(B) THE GERMANS QUESTIONED
THE NEED FOR A SEPARATE PARAGRAPH ON REACTOR TRANSFERS,
AND ASKED WHAT IT ADDED TO SUBPARA (A) ON FUEL
TRANSFERS. AFTER SOME DISCUSSION THEY REALIZED THAT
THIS PARAGRAPH WAS DESIGNED TO BROADEN SAFEGUARDS
COVERAGE THROUGH "CONTAMINATION" OF THE FACILITY INTO
WHICH THE PRODUCTS OF AN EXPORTED REACTOR MAY PASS, SO
THAT SUCH FACILITY WILL THEREAFTER BE SAFEGUARDED AND
ALL ITS PRODUCTS WILL THEREAFTER BE SAFEGUARDED. WHILE
THEY UNDERSTOOD THE CONCEPT, AND BELIEVED WE SHOULD
CONTINUE TO PURSUE IT, THEY THOUGHT THE DESCRIPTION
OF IT SHOULD BE CLARIFIED AND THEY INDICATED SOME
SKEPTICISM AS TO WHETHER THE TRAFFIC COULD BEAR IT.

16. WITH RESPECT TO PARA 8(C) THE U.S. REPS POINTED OUT

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THE BRITISH SUGGESTION--WITH WHICH WE WERE SYMPATHETIC--
OF MAKING AT LEAST THE FIRST TWO CRITERIA MANDATORY
RATHER THAN DISCRETIONARY. THE GERMANS INDICATED SOME
RECEPTIVITY TO THIS IDEA.

17. WITH RESPECT TO PARA 9, THE GERMANS POINTED OUT THAT
IT SHOULD COVER TECHNOLOGY TRANSFERS AS WELL AS TRIGGER
LIST ITEMS, AND THE U.S. DEL AGREED. THE GERMANS
THOUGHT PARA 9(A) (WHICH CLEARLY REQUIRED GOVERNMENT TO
GOVERNMENT ASSURANCES) SHOULD APPLY ONLY TO SENSITIVE
EXPORTS, AS IN THE FRG-BRAZILIAN AGREEMENT. FOR LESS

SENSITIVE TRIGGER LIST ITEMS THEY THOUGHT THERE SHOULD BE
SOME ARRANGEMENT UNDER WHICH CONSENT WAS PRESUMED IF THE
REQUIREMENTS OF PARA 9(B) WERE MET. THE U.S. REPS REPLIED
THAT ALL TRIGGER LIST ITEMS SHOULD BE CONSIDERED SENSITIVE
FOR THIS PURPOSE, AND THAT THE CONSENT REQUIREMENT WOULD BE
USEFUL IN DEALING WITH POSSIBLE REEXPORTS TO UNSTABLE AREAS.

18. WITH RESPECT TO PARA 9(B), THE GERMANS AGAIN POINTED
OUT THE NEED TO GET ASSURANCES ON RETRANSFER FROM A NWS IF
IT WERE THE FIRST RECIPIENT, AND CITED AS PRC AS EXAMPLE.

19. WITH RESPECT TO PARAS 10-13, THE GERMANS HAD NO SUB-
STANTIVE PROBLEMS, BUT THOUGHT THESE ITEMS SHOULD NOT BE
TREATED SEPARATELY BUT MELDED INTO THE EARLIER SECTIONS OF
THE PAPER.

20. WITH RESPECT TO PARA 14, MR. VEST SUGGESTED THE DELE-
TION OF THE WORDS "ON SUPPLEMENTARY CONDITIONS FOR NUCLEAR
TRANSFER" AS BEING TOO RESTRICTIVE ON THE SCOPE OF CONSUL-
TATIONS, AND THE GERMANS CONCURRED.

21. A BRIEF DISCUSSION OF SANCTIONS LED TO THE INFORMAL
SUGGESTION THAT IN THE EVENT OF A SIGNIFICANT BREACH OF ANY
OF THE GUIDELINES BY A RECIPIENT STATE, THE SUPPLIERS SHOULD
PROMPTLY ENGAGE IN CONSULTATIONS WITH RESPECT TO THEIR
RESPONSE. THE GERMANS SAID THEY THOUGHT IT IMPORTANT TO
AVOID ENABLING SUCH A RECIPIENT TO FULFILL ITS NEEDS BY
TURNING TO OTHER SUPPLIERS.

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22. BOTH SIDES AGREED SEPTEMBER MEETING WOULD HAVE TO CON-
SIDER BOTH GENERAL QUESTION OF BROADENING PARTICIPATION AND
SPECIFIC PROBLEM OF RESPONDING TO QUERIES AT THE IAEA GENERAL
CONFERENCE AND GIVING INTERESTED COUNTRIES, SUCH AS THE

SWEDES, AUSTRALIANS, DUTCH, AND ITALIANS, MORE INFORMATION ON THE NATURE OF OUR DELIBERATIONS THAN HAD BEEN FEASIBLE TO DATE. BUT IT WAS CONSIDERED IMPRACTICAL TO INCLUDE THEM IN THE WORKING GROUP THAT WOULD FOLLOW THE SEPTEMBER MEETING.

23. ON SPECIFIC EXPORT CASES, THERE WAS NO FORMAL DISCUSSION EXCEPT TO ILLUSTRATE PARTICULAR SUBSTANTIVE POINTS IN THE DRAFT GUIDELINES. A REPORT OF VEST-BALKEN DISCUSSIONS ON NEGOTIATIONS WITH IRAN IS REPORTED REFTEL. IN PRIVATE CONVERSATIONS, U.S. REPS POINTED OUT THE NEED FOR THOSE WHO WERE CONSIDERING SALES OF REACTORS TO SOUTH AFRICA TO TAKE A COMMON LINE ON SAFEGUARDS REQUIREMENTS WITH A VIEW TO OBTAINING SAFEGUARDS ON THE SOUTH AFRICAN ENRICHMENT PLANT, AND HAUBER INDICATED THAT THEY WERE ACUTELY AWARE OF THIS NEED, IN ADDITION TO THE GENERAL POLITICAL SENSITIVITY OF DEALING WITH SOUTH AFRICA.

24. IN SEPARATE MEETINGS HAUBER AND ROTH BOTH STRESSED DEEP INTEREST OF FRG DISARMAMENT OFFICIALS IN THE NUCLEAR SUPPLIERS ISSUES AND URGED THAT THEY BE INCLUDED IN ANY APPROACHES MADE IN BONN. FYI THEY VOLUNTEERED THAT THE GERMAN-BRAZILIAN DEAL SHOULD NOT BE TAKEN AS THE FURTHEST LIMIT THE GERMANS WOULD BE WILLING TO GO IN NUCLEAR EXPORT RESTRICTIONS, ALTHOUGH LATTER STILL UNDER CONSIDERATION IN BONN. (ROTH SAID HE HAD OPPOSED THE TRANSFER OF REPROCESSING TECHNOLOGY TO BRAZIL.) ROTH TOLD VAN DOREN THAT THE GERMANS CURRENTLY HAD A FREEZE ON MAJOR NEW TRANSACTIONS IN THIS FIELD, BUT THAT UNLESS AGREEMENT AMONG SUPPLIERS COULD BE REACHED BY THE END OF THE YEAR HE FEARED THAT THE SITUATION WOULD GET OUT OF CONTROL. END FYI. KISSINGER

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